

RECORD IMPOUNDED

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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2096-09T2

L.R.,

Plaintiff-Appellant,

V.

D.G.K.,

Defendant-Respondent.

Submitted January 30, 2012 - Decided February 16, 2012

Before Judges Harris and Newman.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Atlantic
County, Docket No. FV-01-000539-10.

Hankin Sandman & Palladino, attorneys for
appellant (Colin G. Bell, on the brief).

Respondent has not filed a brief.

PER CURIAM

Plaintiff L.R. appeals from the dismissal of her temporary
restraining order against defendant D.G.K. on the ground that
jurisdiction was lacking under the Prevention of Domestic
Violence Act, N.J.S.A. 2C:25-17 to 35, (Act).

To place the issue in the proper perspective, the procedural background is relevant and may be summarized as follows: On September 29, 2009, plaintiff filed a domestic violence complaint against her husband, S.A. and defendant, D.G.K., her husband's brother-in-law. A temporary restraining order was issued against both plaintiff's husband and D.G.K., and the matters were consolidated for a hearing on the issue of a final restraining order, on October 15, 2009. That hearing was adjourned to allow plaintiff to file amended complaints against D.G.K. and her husband, and the temporary restraints remained in effect.

On October 23, 2009, both parties appeared before the court. During the testimony, the trial court was concerned that D.G.K. did not qualify as a "former household member" under N.J.S.A. 2C:25-19(d) and questioned the court's jurisdiction over D.G.K. under the Act. The parties were directed to submit briefs on the issue. Plaintiff did so on October 27, 2009, and D.G.K. filed a response on October 29, 2009.

On October 30, 2009, the parties again appeared, and the trial court granted plaintiff's trial counsel's application to withdraw as counsel with plaintiff's consent. At that hearing, the trial court indicated that it had "skimmed" both briefs and "there seemed to be factual disputes between the persons who

signed the affidavits, and in the event of the factual dispute, I'm going to have to conduct a hearing to try to determine what the facts are before I make a decision." The trial court fixed the date of November 17, 2009, by which time plaintiff would have had to retain a new attorney.

Unfortunately, by November 17, 2009, plaintiff had been hospitalized, was in the hospital's intensive care unit and could not proceed. The matter was carried to December 1, 2009.

On December 1, 2009, plaintiff appeared with new counsel. The attorney made reference to the papers submitted by prior counsel on plaintiff's behalf. The trial court did not recall receiving the submission, nor could it be located in the court's file. When D.G.K.'s counsel was asked whether he had received the submission, he denied that he did, despite the fact that he acknowledged its receipt in court on October 30, 2009, and, indeed, had referred to plaintiff's submission in responding papers.

Contrary to the trial court's earlier pronouncements of October 30 and November 17, 2009, that it would hold a Rule 104 hearing to resolve the factual disputes between the parties, the trial court inexplicably did not do so. Plaintiff's counsel was allowed to make a proof proffer and argue plaintiff's position. In deciding the jurisdictional issue without holding an

evidentiary hearing, the trial court indicated that it assumed everything that plaintiff's attorney represented about D.G.K. was true which had generally outlined the nature of D.G.K.'s relationship with plaintiff. The trial court ruled that D.G.K. did not fall within the statutory definition of a "former household member." The trial court was unable to conclude that there would be an "emotional entanglement" between plaintiff and defendant, her husband's brother-in-law, because plaintiff's two children will have an ongoing relationship with plaintiff's husband. The court did not see any future emotional tie. Further, if there was a prior business relationship between plaintiff and D.G.K. that might result in litigation, the trial court viewed it as insufficient to invoke the protection of the Act.

On appeal, plaintiff raises the following points for our consideration:

POINT I

The Decision of the Trial Court must be Reversed Because L.P. was Denied Due Process of Law.

POINT II

L.P. Presented a Prima Facie Case Against D.G.K.

We recognize plaintiff's due process arguments; however, we are stymied by the fact that the trial court did not comply with

Rule 1:7-4. Noncompliance with a rule that requires factual findings deprives us of making a meaningful review. Ronan v. Adely, 182 N.J. 103, 110 (2004). The trial court is required under Rule 1:7-4 to "find facts and state its conclusions of law therein in all actions tried without a jury, on every motion decided by a written order that is appealable as of right" That has not been done here.

The trial court made reference to accepting what plaintiff has presented in her papers. However, under Rule 1:6-7, the trial court was "insofar as possible" required to read these papers in advance of the hearing. The best we can ascertain from the judge's comments is that he only "skimmed" them from his remarks on October 30, 2009, had not seen them since and had not reviewed them in preparation for the hearing held on December 1, 2009. When the trial court stated that it accepted all of plaintiff's statements, there was no detail of what those statements were. This was tantamount to not having anything in the record to support findings when, as here, no specific findings were made. Furthermore, D.G.K. submitted an opposing affidavit, disputing plaintiff's contentions. D.G.K. denied that he and his wife had ever lived together with plaintiff and her husband for the period of time from July through December 2005. He denied making any verbal threats against plaintiff.

D.G.K. also pointed out that he no longer lives nearby plaintiff, but rather resides forty minutes away.

In view of the very contested factual issues presented, an evidentiary hearing was essential to resolve these issues and credibility assessments made by the trial court. The trial court could then have made specific findings of fact and drawn conclusions of law, thus complying with the requirements of Rule 1:7-4. Without the trial court having done so, we are in no position to review its decision.

We therefore reverse the decision dismissing the TRO on jurisdictional grounds. Since a substantial period of time has elapsed, the court may deem it appropriate to require the parties to submit current certifications or affidavits to bring the status of the matter up-to-date. We express no opinion on the merits of the jurisdictional issue. Additionally, because of our decision to reverse, we need not address plaintiff's due process arguments.

Reversed and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION